



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2021-0338]

RIN 1625-AA00

Safety Zone; Barge Big Digger and Tugs Kimberly Anne and Andrew J Operating in the Straits of Mackinac, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comment.

SUMMARY: This rule amends an earlier safety zone titled “Safety Zone; Tugs Kimberly Anne and Westwind and Barge Big Digger Operating in the Straits of Mackinac, MI” issued on May 26, 2021, because one of the tug vessels named in the earlier rule has changed. The size, duration, and purpose of the safety zone remains the same. This rule continues to restrict entry into a 500-yard radius around two tugs and a barge engaged in pipeline-related work in the Straits of Mackinac. The safety zone is needed to protect personnel, vessels, and the marine environment from the potential hazards created by the work, inspection, diving, and surveying of pipelines in the Straits of Mackinac.

DATES: This interim rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through October 15, 2021. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0338 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY

INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Deaven Palenzuela, Sector Sault Sainte Marie Waterways Management Division, U. S. Coast Guard at (906) 635-3223 or email ssmprevention@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Abbreviations

DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Cod

II. Background, Purpose, and Legal Basis

On May 26, 2021, the Coast Guard published a temporary interim rule, at 86 FR 28268, that established a temporary safety zone around the tug vessels KIMBERLY ANNE and WESTWIND, as well as barge BIG DIGGER. This safety zone is needed to protect personnel, vessels, and the marine environment from the potential hazards created by the work, inspection, diving, and surveying of pipelines in the Straits of Mackinac. In July 2021, the construction company notified the Coast Guard that it needed to switch out the tug vessel WESTWIND for the tug vessel ANDREW J. This interim rule amends the existing safety zone to remove the name of the tug vessel WESTWIND and replace it with the name of the tug ANDREW J.

The Coast Guard is issuing this temporary interim rule without undergoing notice and comment procedures pursuant to section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior public notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because

doing so would be impracticable and unnecessary. The pipeline work is ongoing and the barge is on site, and the unexpected switch of attending tug vessel did not allow time for meaningful public comment before making the change. Moreover, the change to the specific tug vessel attending the barge BIG DIGGER does not change the scope, timing, or other details of the ongoing work, and is therefore of little interest to the public.

Because this safety zone will be in place until October 15, however, there is time to provide a 30-day public comment period after the effective date of this rule. The Coast Guard will consider all public comments received, and may change the rule in response to comments if doing so is appropriate.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed above, delaying the effective date of this rule would be impracticable and unnecessary.

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards created by the work, inspection, diving, and surveying of underwater infrastructure in the Straits of Mackinac that started June 1, 2021, will be a safety concern for anyone within a 500-yard radius of the tugs and barge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the operation is conducted.

III. Discussion of the Rule

This rule revises an existing safety zone that is anticipated to continue until October 15, 2021. The safety zone continues to cover all navigable waters within 500 yards of the barge BIG DIGGER and its attending tugs, which are being used to work, inspect, dive, and survey pipelines in the Straits of Mackinac. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable

waters while the operation is conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The only change this rule makes to the existing safety zone is a change to the specific tug named.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small area of the Straits of Mackinac. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under Executive Order 13132

and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 500 yards of tugs and barges used to work, inspect, dive, and survey pipelines in the Straits of Mackinac. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the

docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, call or email the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

To view documents mentioned as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will

only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

2. Amend § 165.T09-0338 by revising the section heading and paragraph (a) to read as follows:

§ 165.T09-0338 Safety Zone; Tugs Kimberly Anne and Andrew J and Barge Big Digger operating in the Straits of Mackinac, MI.

(a) Location. The following areas are safety zones: All navigable water within 500 yards of the Tugs Kimberly Anne and Andrew J and Barge Big Digger while conducting work, inspection, diving, and surveying of pipelines in the Straits of Mackinac.

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Dated: August 9, 2021.

A.R. Jones,
Captain, U.S. Coast Guard,
Captain of the Port Sault Sainte Marie.

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